

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**KELLY T. SCOTT, CRD #2199834; and
ING FINANCIAL PARTNERS, INC.,
CRD #2882**

Respondents.

**PETITION TO REVOKE LICENSE,
BAR LICENSEE, SUSPEND
LICENSEE AND IMPOSE FINES**

Docket No. SD-07-0031
Docket No. SD-07-0032

Pursuant to the authority of Utah Code Ann. § 61-1-6, the Utah Division of Securities (“Division”) hereby petitions the Director of the Division (“Director”) to enter an Order, subject to the approval of a majority of the Securities Advisory Board, revoking the broker-dealer and investment adviser representative licenses of Kelly T. Scott (“Scott”), CRD #2199834, and barring him from the securities industry, censuring and suspending the broker-dealer license of ING Financial Partners, Inc. (“ING”), CRD#2882, and imposing fines against Scott and ING. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. ING is a Minnesota corporation located in Des Moines, Iowa, and has been a licensed broker-dealer in Utah since April 21, 1983. ING is also a federal-covered investment

adviser. ING was formerly known as Washington Square Securities, Inc.

2. Scott has been licensed in Utah as a broker-dealer agent with ING since December 24, 1996. Scott has been a licensed investment adviser representative of ING since September 8, 1998. Scott was previously employed with WMA Securities, Inc. (“WMA”) from December 22, 1995 until August 1, 1996, but was not licensed in any capacity. Prior to his employment with WMA, Scott was a licensed broker-dealer agent of InterSecurities, Inc. from December 3, 1991 until his voluntary termination on July 30, 1992.
3. Educaitonal [sic] Retirement Seminars of Utah, Inc. (“Retirement Seminars”) is a Utah registered corporation. Scott is Retirement Seminars’ director and registered agent.
4. Scott also conducts business using the assumed name “Retirement Advisors,” which name is a registered “dba” with the Utah Department of Commerce.

Senior Seminar Sales Presentations

5. On April 18 and April 19, 2006, Scott presented three “free” ‘Wealth Advantage Financial Retirement Workshops by Educational Retirement Seminars, Inc.’ at the Davis Conference Center in Layton, Utah.
6. A Division employee attended Scott’s afternoon presentation on April 18, 2006. The seminar targeted seniors and touted Scott as a “true blue independent.”

Unapproved Seminar Materials

7. Invitations mailed by Scott claimed the seminar is “Utah’s Number One and Most Informative Retirement Course!” This statement was not included in the seminar invitation that was approved by ING.

8. The invitation included an enclosure card that described Scott as “Your Workshop Instructor.” The enclosure card was not included in the invitation materials that were approved by ING.
9. During the seminar, Scott gave seminar attendees a map with directions to his office. Centered in bold at the bottom of the page is, “INDEPENDENT RETIREMENT ADVISING”. This document was likewise not approved by ING.

Failure to Disclose and Misrepresentations

10. Much of Scott’s presentation focused on variable annuities with minimum guaranteed interest benefit (“MGIB”) riders that “guarantee” a seven percent (7%) return.
11. Scott misrepresented and omitted material facts during the seminar including, but not limited to, the following:
 - (a) Scott failed to disclose that his seminar was a sales presentation designed to gain additional clients and commissions for ING and Scott, rather than the educational course he claimed it to be;
 - (b) Scott failed to disclose that: i) the guaranteed seven percent is used for calculating the annuity contract owner’s guaranteed minimum income only; and ii) the seven percent figure does not become the contract value;
 - (c) Scott failed to disclose that the seven percent income benefit has a cap of three times the initial premium or the contract value when the investor reaches age 80, whichever occurs first;
 - (d) Scott misrepresented that MGIBs are “great” whether “you’re 50 or whether you’re 80” when in fact, the variable annuities with MGIBs that Scott sells are not

available to investors who are 75 or older;

- (e) Scott failed to disclose that investors should carefully review an offering insurance company's rating before purchasing a variable annuity and instead stated that the insurance companies that offer the MGIBs are "among the largest companies in the world" and that if these companies went out of business, investors "would already see some very bad things in the world today...banks and...many other insurance companies would have already run out";
- (f) Scott misrepresented that all fifty state insurance departments have "signed off" on or approved of the MGIBs;
- (g) Scott failed to disclose the significant commissions involved in the purchase of a variable annuity. He instead represented that the insurance companies "don't charge you any commission to get into [the variable annuities with MGIBs];"
- (h) Scott misrepresented that if an investor faces a penalty to move moneys from a CD or existing annuity, when the investor switches to one of the companies Scott pitched, the company will pay the penalty "in full;"
- (i) Scott failed to adequately disclose the fees and costs associated with MGIBs and instead represented that "[i]t's absolutely nothing to get into [variable annuities with MGIBs]";
- (j) Scott misrepresented that his clients are not charged "one cent" for purchasing an MGIB;
- (k) Scott misrepresented that every mutual fund Scott's clients have in the sub-accounts of their variable annuities are among the top 1% of mutual funds in the

nation;

- (l) Scott misrepresented that the “big” firms such as “Morgan Stanley Dean Witter, Merrill Lynch, Salomon Smith Barney, American Express, D.A. Davidson” do not recommend or sell the top 1% of mutual funds in the nation;
- (m) Scott misrepresented that he is a “true blue independent” and that he therefore is better able to find and recommend the best funds and the best variable annuities;
- (n) Scott failed to disclose that in fact, he may only sell ING-approved products, and that a majority of his business as a “true blue independent” comes from the sale of ING variable annuities; and
- (o) Scott misrepresented that no matter what funds and annuities he sells, his firm, ING, gets the same commission.

The above statements are false or omit material facts necessary to make such statements not misleading.

ING's Misrepresentations

- 12. ING approved a majority of the language Scott used in his seminar invitations. Included in the ING-approved language is “Wealth Advantage Financial Retirement Workshop Presented by Educational Retirement Seminars, Inc.” and a statement that the seminar was to be “presented by a licensed, qualified instructor.”
- 13. In approving this language, ING misrepresented and omitted the following material facts:
 - (a) ING failed to disclose that Educational Retirement Seminars, Inc. is a corporation owned by Scott;
 - (b) ING misrepresented that Scott has educational qualifications or certifications for

instructing others on financial matters; and

- (c) ING failed to disclose that Scott has no teaching certifications but was giving a sales presentation designed to bring in more business and sales commissions for ING and Scott.

ING's Failure to Supervise

- 14. Prior to the 2006 seminars, ING was advised by the Division that Scott had conducted potentially misleading seminars.
- 15. On February 12, 2004, in response to an inquiry by the Division, ING wrote the Division a letter stating:

Since the seminar material was not used in the manner that it was designed or approved for use by ING Financial Partners, Inc., no written approval for that specific seminar exists. The materials presented by Mr. Scott were a selection of slides from approved seminars available for use with the public. The information presented by Mr. Scott could have included approved materials from previous years and was therefore not current and not complete...The seminars are intended to be presented over several meetings, and an isolated exposure to the seminar may not accurately portray the breadth of information being presented.

- 16. The letter closed by stating questions or comments should be directed to an ING Regulatory Manager.
- 17. On July 26, 2006, the same ING Regulatory Manager participated in a conference call with the Division in which she represented that Scott was previously under the impression he could present portions of approved seminars rather than presenting approved seminars in their entirety. ING represented it had discussed the issue with Scott and that going forward, Scott understood he may only present seminar materials as approved.

18. In the February 12, 2004 letter, ING acknowledged that Scott had violated ING's policies by using an unapproved business card that stated Scott was a "Retirement Specialist." In the same letter, ING represented that it would take disciplinary action against Scott. However, in 2006, when the Division requested such information, ING acknowledged it could not locate any documentation demonstrating any disciplinary action.
19. Finally, in 2006, ING provided the Division with five investor complaints, four of which were made by seniors, alleging Scott misled the investors when he sold them variable annuities. The allegations were, among other things, that he guaranteed the investors they could not lose their money, guaranteed them six to seven percent per annum interest, and assured them that when they purchased new variable annuities from him, they would receive "bonuses" to cover any surrender charges they incurred on their existing variable annuities.
20. Most, if not all, of these investors met Scott after attending one of his seminars (or "educational courses" as Scott, ING and the investors refer to the seminars.)
21. In each case involving a senior, the complaint was denied by ING or its predecessor, stating the investor had received the prospectus and signed all the required documents to purchase the variable annuity.
22. The one non-senior customer filed an arbitration action against ING and Scott and the matter was settled for \$55,000.
23. The Division's prior notice to ING and the multiple complaints filed against Scott with similar allegations should have caused ING to investigate and take corrective action concerning Scott.

24. ING's inaction, despite its knowledge, evidences a failure to reasonably supervise Scott.

CAUSES OF ACTION

COUNT I (Scott)

(Securities Fraud under § 61-1-1(2) of the Utah Uniform Securities Act ("Act"))

25. Scott violated Section 61-1-1(2) of the Act by misrepresenting and omitting material facts when he gave his sales presentation to potential investors, including, but not limited to, those described above in paragraph 11.

COUNT II (Scott)

(Securities Fraud under § 61-1-1(3) of the Act - Fraud Against Potential Clients, Broker-Dealer and Investment Adviser)

26. Scott's use of unapproved seminars, advertising and sales materials constitute misrepresentations to potential clients, his broker-dealer and investment adviser, which constitutes an act, practice or course of business which operated as a fraud upon potential clients and ING, and exposed ING to potential liability.
27. Scott's use of seminars purporting to be educational in nature, but which were really sales presentations for the purposes of gaining new clients and selling products constitutes an act, practice, or course of business which operated as a fraud.

COUNT III (ING)

(Securities Fraud under § 61-1-1(2) of the Act)

28. ING violated Section 61-1-1(2) of the Act by misrepresenting and omitting material facts regarding the educational nature of the seminar and Scott's qualifications as an instructor, including:
- (a) ING failed to disclose that Educational Retirement Seminars, Inc. is a corporation owned by Scott;

- (b) ING misrepresented that Scott has some type of educational qualifications for instructing others on financial matters; and
- (c) ING failed to disclose that Scott has no teaching certifications but was giving a sales presentation designed to bring in more business and commissions for ING and Scott.

COUNT IV (Scott and ING)

(Dishonest and Unethical Business Practices under § 61-1-6(2)(g) of the Act - Misleading or Deceptive Sales Presentation)

- 29. Scott engaged in dishonest and unethical conduct under Utah Admin. Code Rule R164-6-1g(C)(18), applicable to agents through (D)(7), by using advertising or a sales presentation in such a fashion as to be deceptive or misleading, as described above, warranting sanctions under Section 61-1-6(2)(g) of the Act.
- 30. ING engaged in dishonest and unethical conduct under Utah Admin. Code Rule R164-6-1g(C)(18) by approving deceptive and misleading seminar invitations.

COUNT V (Scott)

(Dishonest and Unethical Business Practices under § 61-1-6(2)(g) of the Act - Violation of NASD Conduct Rule 2210)

- 31. Scott violated NASD Conduct Rule 2210 by using unapproved and misleading seminars, advertising and sales materials, which is a dishonest or unethical business practice under Utah Admin. Code Rule R164-6-1g(C)(28), applicable to agents through (D)(7), warranting disciplinary sanctions under Section 61-1-6(2)(g) of the Act.

COUNT VI (ING)

(Failure to Supervise under §§ 61-1-6(2)(g),-(j)) of the Act and Utah Admin Code R164-6-1g(C)(28))

32. Scott, who was subject to the supervision of ING, committed numerous violations of the Act as described above.
33. ING had prior notice that Scott was committing or potentially committing violations of the Act. Despite such knowledge, ING failed to correct Scott's behavior. ING failed to implement and/or enforce policies and procedures reasonably designed to detect and prevent Scott's securities law violations.
34. ING failed reasonably to supervise Scott, warranting disciplinary sanctions under Section 61-1-6(2)(j) of the Act. ING's failure to supervise violates NASD Conduct Rule 3010, which violation is a dishonest or unethical business practice under R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(g) of the Act.

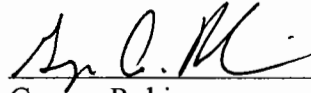
REQUEST FOR RELIEF

The Division requests that, based upon Scott's willful violations of the Act, pursuant to § 61-1-6 of the Act and subject to the approval of the Securities Advisory Board, the Director enter an order revoking the broker-dealer agent and investment adviser representative licenses of Scott, barring him from association with any broker-dealer or investment adviser licensed in this state, and fining him no less than \$50,000.

The Division requests that, based upon ING's willful violations of the Act, pursuant to § 61-1-6 of the Act and subject to the approval of the Securities Advisory Board, the Director enter an order censuring ING, suspending its license, and imposing a fine of no less than \$100,000.

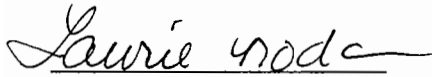
DATED this 14th day of May, 2007.

UTAH DIVISION OF SECURITIES



George Robison
Director of Licensing

Approved:



Laurie Noda
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South
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Salt Lake City, Utah 84114-6760
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IN THE MATTER OF:

**KELLY T. SCOTT, CRD #2199834; and
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CRD #2882**

Respondents.

NOTICE OF AGENCY ACTION

Docket No. SD-07-0031
Docket No. SD-07-0032

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Utah Division of Securities hereby commences a formal adjudicative proceeding against you as of the date of mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 and 63-46b-6 through -11. The facts on which this action is based are set forth in the accompanying Petition. You may be represented by counsel or you may represent yourself in this proceeding.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63-46b-6(1). In addition, pursuant to Utah

Code Ann. § 63-46b-6(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Petition, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

After your response is filed, a pre-hearing conference will be held. Utah Admin. Code R151-46b-9(9). The purpose of the pre-hearing conference is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Laurie L. Noda
Assistant Attorney General
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310


If you fail to file a response, as described above, or fail to appear at any hearing that is set,

the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63-46b-11; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Petition, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63-46b-11(4); Utah Admin. Code R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63-46b-10.

The presiding officer in this case is Benjamin Johnson, Director, Corporate Finance, Division of Securities. An administrative law judge will be assigned to hear this matter. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Petition should be directed to Laurie L. Noda, Assistant Attorney General, 160 E. 300 South, Fifth Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 16th day of May, 2007.


Benjamin Johnson
Presiding Officer
Division of Securities
Utah Department of Commerce



Certificate of Mailing

I certify that on the 16th day of May, 2007, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

Kelly T. Scott
14212 So. Canyon Vine Cove
Draper, UT 84020

Certified Mail # 7005 1820 0003 7190 5741

ING Financial Partners, Inc.
Attn: Christopher Cokinis
909 Locust Street
Des Moines, IA 50309

Certified Mail # 7005 1820 0003 7190 5758

Pamela Radzinski

Executive Secretary